

Message Text

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ACTION L-03

INFO OCT-01 EA-11 ISO-00 AID-20 SS-20 NSC-07 H-03 IGA-02

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RSC-01 USIA-15 PRS-01 SP-03 DRC-01 /123 W

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R 220905Z APR 74

FM AMEMBASSY MANILA

TO SECSTATE WASHDC 2881

INFO AMEMBASSY BANGKOK

AMEMBASSY JAKARTA

AMEMBASSY KUALA LUMPUR

AMEMBASSY SINGAPORE

CINCPAC

C O N F I D E N T I A L SECTION 1 OF 2 MANILA 4675

C O R R E C T E D C O P Y (PARAS 3. AND 4.)

CINCPAC FOR POLAD

JOINT EMBASSY/AID/JUSMAG MESSAGE

E.O. 11652: GDS

TAGS: EAID, MASS, PINT, RP

SUBJECT: FAA SECTION 32 - POLITICAL PRISONERS

REF: STATE 068545

BEGIN SUMMARY: INDIVIDUALS ARE ARRESTED FOR POLITICAL REASONS IN PHILIPPINES UNDER PRESENT MARTIAL LAW REGIME. ALTHOUGH NEW PHILIPPINE CONSTITUTION, DOMESTIC LAW AND MARTIAL LAW REGULATIONS SET FORTH PROCEDURES GOVERNING RIGHTS OF INDIVIDUALS IN THIS RESPECT, WARRANTS OF ARREST STATING PROBABLE CAUSE ARE NOT ALWAYS ISSUED. DETENTION IS ARBITRARY IN SENSE THAT WRIT OF HABEAS CORPUS NOT AVAILABLE AND CHARGES ARE NOT USUALLY MADE NOR CASES BROUGHT TO TRIAL. POLITICAL DETAINEES
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PRESENTLY NUMBER ABOUT 5000 ACCORDING GOP. DURATION OF DETENTION

FOR MOST POLITICAL PRISONERS HAS GENERALLY BEEN SHORT AND CONDITIONS ADEQUATE. THE USG HAS LIMITED LEVERAGE AVAILABLE TO IMPROVE SITUATION. APPLICATION OF FAA SECTION 32 TO PHILIPPINES WOULD PROBABLY SERIOUSLY AFFECT BASIC AMERICAN ECONOMIC AND/OR SECURITY INTERESTS IN PHILIPPINES AT TIME WHEN WE ARE RENEGOTIATING OUR MAJOR BILATERAL ECONOMIC AND SECURITY AGREEMENTS. END SUMMARY.

1. ARREST AND DETENTION OF INDIVIDUALS FOR POLITICAL PURPOSES HAS TAKEN PLACE IN PHILIPPINES SINCE DECLARATION OF MARTIAL LAW BY PRESIDENT MARCOS IN SEPT. 1972. MARTIAL LAW WAS DECLARED IN ACCORDANCE WITH POWERS GRANTED TO PRESIDENT, AS COMMANDER-IN-CHIEF OF ARMED FORCES, UNDER ARTICLE VII OF 1935 CONSTITUTION AND CONTINUES IN EFFECT UNDER IDENTICAL POWERS GRANTED BY ARTICLE IX OF 1973 CONSTITUTION.

2. UNDER MARTIAL LAW, GOP HAS ARRESTED INDIVIDUALS WHOM IT HAS REGARDED AS THREATENING POLITICAL STABILITY OF PRESENT GOVERNMENT. SUCH ARRESTS ARE MADE BY ARMED FORCES OF PHILIPPINES (AFP), PRINCIPALLY THE PHILIPPINE CONSTABULARY, WHICH IS PRIMARY ENFORCEMENT AGENCY OF MARTIAL LAW. WHILE TOTAL NUMBER OF ARRESTS MADE BY MILITARY SINCE MARTIAL LAW IS NOT AVAILABLE, EMBASSY ESTIMATES THAT NUMBER FALLS BETWEEN 25,000 AND 30,000. MAJORITY OF THIS TOTAL, HOWEVER, HAS BEEN WANTED CRIMINALS. SMALLER NUMBER HAS BEEN COMMUNIST AND MUSLIM INSURGENTS WHO HAVE TAKEN UP ARMS AGAINST GOVERNMENT AND MEMBERS OF VARIOUS LEFTIST GROUPS SEEKING VIOLENT OVERTHROW OF GOVERNMENT. EVEN SMALLER NUMBER IS PERSONS ARRESTED FOR NON-LEFTIST AND NON-INSURGENT POLITICAL ACTIVITIES. SENIOR AFP OFFICIALS HAVE RECENTLY ESTIMATED THAT ABOUT 7,000 PERSONS ARE PRESENTLY UNDER MILITARY DETENTION. OF THIS NUMBER, ABOUT 500 ARE CLASSIFIED AS POLITICAL PRISONERS BY GOP. REMAINING 6,500, A FIGURE WHICH PROBABLY INCLUDES INSURGENT AND SOME LEFTIST DETAINEES, ARE CLASSIFIED IN CRIMINAL CATEGORY. EMBASSY HAS NO INDEPENDENT WAY OF VERIFYING THESE FIGURES.

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3. BILL OF RIGHTS ARTICLES OF BOTH 1935 AND 1973 CONSTITUTION PROVIDE THAT NO ARREST WARRANT CAN BE ISSUED WITHOUT PROBABLE CAUSE. WHILE 1935 CONSTITUTION STATED THAT ONLY A JUDGE CAN DETERMINE PROBABLE CAUSE, 1973 CONSTITUTION PROVIDES THAT A JUDGE "OR SUCH OTHER RESPONSIBLE OFFICES AS MAY BE AUTHORIZED BY LAW" MAY MAKE THIS DETERMINATION. UNDER MARTIAL LAW, SOME MILITARY OFFICERS HAVE BEEN EMPOWERED TO DETERMINE PROBABLE CAUSE. WHILE IN THEORY CONSTITUTIONAL PROVISION CONCERNING

PROBABLE CAUSE IS RESPECTED, IN PRACTICE AN ARRANGEMENT WHICH PERMITS OFFICERS OF EXECUTIVE BRANCH TO DECIDE PROBABLE CAUSE, TO ISSUE ARREST WARRANTS AND TO MAKE ARRESTS INVITES ABUSE.

4. ARBITRARY DETENTION OF PERSONS ARRESTED FOR POLITICAL REASONS EXISTS, AS WRIT OF HABEAS CORPUS WAS EFFECTIVELY SUSPENDED AT TIME MARTIAL LAW WAS DECLARED. A NUMBER OF PETITIONS FOR WRITS OF HABEAS CORPUS ON BEHALF OF DETAINED INDIVIDUALS WERE FILED BEFORE SUPREME COURT IN LATE 1972, BUT COURT HAS NOT ACTED.

5. ONCE AN ACCUSED PERSON IS BROUGHT TO TRIAL, HE IS ENTITLED TO RIGHTS ASSOCIATED WITH DUE PROCESS. IN GENERAL, BEFORE EITHER MILITARY OR CIVILIAN COURTS, ACCUSED HAS RIGHT TO BE INFORMED OF CHARGES AGAINST HIM, TO BE REPRESENTED AT TRIAL BY HIS DEFENSE COUNSEL, TO TESTIFY ON HIS OWN BEHALF, TO PRESENT EVIDENCE, TO CROSS EXAMINE WITNESSES AND TO OBTAIN A COPY OF PROCEEDINGS. IF CONVICTED BEFORE A MILITARY TRIBUNAL, HOWEVER, HE HAS NO FORMAL RIGHT OF APPEAL BUT IS ENTITLED TO ADMINISTRATIVE REVIEW BY SENIOR MILITARY OFFICERS, SECRETARY OF NATIONAL DEFENSE OR PRESIDENT.

6. THERE HAVE BEEN ALMOST NO EFFORTS TO PREPARE CHARGES AGAINST POLITICAL PRISONERS OR BRING THEM TO TRIAL. INSTEAD, GOVERNMENT USES ITS ARREST POWERES TO DETAIN POLITICAL OPPONENTS AND RELEASES THEM WHEN IT FEELS THAT THEY WILL REFRAIN FROM ANTI-REGIME ACTIVITIES. UNDER THIS TEST, A FEW LEADING OPPOSITION POLITICIANS AND HARD-CORE COMMUNIST PARTY MEMBERS ARE BEING DETAINED INDEFINITELY. MILITARY TRIBUNALS WERE ESTABLISHED AT BEGINNING OF MARTIAL LAW, BUT THEY HAVE BEEN USED ALMOST EXCLUSIVELY TO TRY

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CRIMINAL DETAINEES. ONLY POLITICAL PRISONER WHOM GOVERNMENT HAS ANNOUNCED CHARGES AGAINST AND ATTEMPTED TO TRY HAS BEEN FORMER SENATOR AQUINO. INITIAL HEARING WAS HELD IN AUGUST 1973. HOWEVER, AFTER AQUINO REFUSED TO PARTICIPATE IN TRIAL, THERE HAVE BEEN NO FURTHER EFFORTS TO PROSECUTE HIM (SEE OUR EXTENSIVE REPORTING OF THIS CASE).

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INFO OCT-01 EA-11 ISO-00 AID-20 SS-20 NSC-07 H-03 IGA-02

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C O N F I D E N T I A L SECTION 2 OF 2 MANILA 4675

7. DURATION OF DETENTION FOR MOST NON-SUBVERSIVE POLITICAL PRISONERS HAS BEEN SHORT. MAJORITY OF POLITICAL ARRESTS WERE MADE IN FIRST TWO MONTHS OF MARTIAL LAW WHEN GOVERNMENT SOUGHT TO MINIMIZE OPPOSITION. NO ARREST WARRANTS WERE SERVED FOR PERSONS DETAINED IN THIS INITIAL WAVE OF ARRESTS; THEIR NAMES APPEARED ON MASTER ARREST LISTS, AND THEY WERE ARRESTED IF FOUND BY MILITARY. MOST PERSONS ARRESTED FOR POLITICAL REASONS AT THAT TIME (INCLUDING OPPOSITION POLITICIANS, HEADS OF PRIVATE ARMIES, JOURNALISTS, NEWSPAPER PUBLISHERS AND SEVERAL LEADING INTELLECTUALS) WERE RELEASED WITHIN SEVERAL MONTHS. ALL RELEASES ARE CONDITIONAL, AND MANY EX-DETAINEES ARE REQUIRED TO REPORT REGULARLY TO MILITARY AUTHORITIES. HOWEVER, POLITICAL ARRESTS, ON MUCH SMALLER SCALE, CONTINUE TO OCCUR AGAINST INDIVIDUALS WHOM GOVERNMENT CONSIDERS TO BE POLITICALLY DANGEROUS, BUT DETENTION GENERALLY LASTS FOR ONLY A FEW MONTHS. VERY SMALL NUMBER OF NON-SUBVERSIVE POLITICAL PRISONERS HAS BEEN UNDER DETENTION FOR LONGER PERIODS OF TIME. INCLUDED ARE FORMER SENATORS AQUINO AND DIOKNO (ARRESTED IN SEPTEMBER 1972) AND SONS OF LOPEZ AND OSMENA FAMILIES (ARRESTED IN NOVEMBER 1972).

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8. CONDITIONS OF DETENTION HAVE BEEN GENERALLY ADEQUATE BY ASIAN STANDARDS. DETAINEES RECEIVE FOOD, HOUSING, AND

MEDICAL ATTENTION AND ARE ALLOWED EXERCISE. MORE PROMINENT POLITICAL PRISONERS ARE PERMITTED REGULAR VISITS FROM IMMEDIATE FAMILY MEMBERS AND HAVE REASONABLE ACCESS TO DOMESTIC RADIO, TELEVISION AND NEWSPAPERS. CONDITIONS ARE GENERALLY BETTER IN DETENTION CENTERS IN THE MANILA AREA, WHERE MOST POLITICAL PRISONERS ARE KEPT, THAN IN PROVINCIAL FACILITIES. MR. ANDRE TSCHIFFELI, INTERNATIONAL RED CROSS COMMITTEE REGIONAL DELEGATE FOR SOUTHEAST ASIA, VISITED DETENTION CENTERS IN MARCH AND NOVEMBER 1973 AND FOUND CONDITIONS WHICH HE WAS ALLOWED TO OBSERVE TO BE SATISFACTORY. THE EMBASSY HAS HEARD OF ONLY A FEW INSTANCES OF MISTREATMENT OF DETAINEES. IN GENERAL, FEW EFFORTS ARE MADE TO INTERROGATE POLITICAL DETAINEES. ALMOST ALL PRISONERS ARE HUMANELY TREATED, AND MOST EXCEPTIONS SEEM TO RESULT FROM INDIVIDUAL EXCESSES RATHER THAN GOVERNMENT POLICY. THERE HAVE BEEN SOME CASES IN WHICH INSURGENT LEADERS HAVE BEEN ROUGHLY INTERROGATED IN ORDER TO GAIN INTELLIGENCE INFORMATION ON COMMUNIST OR MUSLIM REBEL ACTIVITIES.

9. DETENTION FOR POLITICAL REASONS IS NEW ELEMENT IN PHILIPPINE POLITICAL LIFE, AND THERE ARE SEVERAL FACTORS WHICH COULD AMELIORATE PRESENT SITUATION. FIRST, GOP DESIRES TO PROJECT POSITIVE INTERNATIONAL IMAGE OF MARTIAL LAW AND IS, TO SOME DEGREE, SENSITIVE AND RESPONSIVE TO CONCERNS OF FOREIGN OBSERVERS, GOVERNMENTS AND INTEREST GROUPS OVER SUSPENSION OF CIVIL LIBERTIES IN PHILIPPINES. THIS SENSITIVITY HAS PROBABLY BEEN ONE REASON WHY MORE POLITICAL ARREST HAVE NOT TAKEN PLACE, PARTICULARLY OF CERTAIN PROMINENT INDIVIDUALS WHO ENGAGE IN LEGAL POLITICAL ACTIVITIES IN OPPOSITION TO REGIME. SECOND, IF ECONOMIC PROGRESS UNDER MARTIAL LAW CONTINUES AND GOP CAN MANAGE SUCCESSFULLY PROBLEMS CAUSED BY COMMODITY SHORTAGES AND INFLATION, IT MAY FEEL SUFFICIENTLY CONFIDENT TO RELAX SOME OF PRESENT MARTIAL LAW RESTRICTIONS. THIRD, IF DOMESTIC POLITICAL OPPOSITION REMAINS WEAK AND REGIME FEELS THAT MARTIAL LAW REFORMS HAVE BECOME REASONABLY PERMANENT, SOME LIBERALIZATION

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SHOULD OCCUR. FOURTH, GOP DESIRES TO INSTITUTIONALIZE POLITICAL CHANGES OF PAST 18 MONTHS. TO EXTENT THIS OCCURS, EASING OF CONTROL OVER MEDIA, DECREASE IN NUMBER OF POLITICAL PRISONERS AND RELATED DEVELOPMENTS MAY TAKE PLACE.

10. INFLUENCE OF US ON POLITICAL PRISONERS QUESTION IN PHILIPPINES IS LIMITED, AND ANY MAJOR OFFICIAL ACT ON OUR PART WOULD MOST LIKELY BE INTERPRETED BY GOP AS INTERFERENCE IN PHILIPPINE INTERNAL AFFAIRS. WERE AMERICAN

ECONOMIC AND MILITARY ASSISTANCE PROGRAMS HERE TERMINATED
BECAUSE OF POLITICAL PRISONER ISSUE, GOP WOULD REGARD THIS
AS HOSTILE ACT AND WOULD PROBABLY TAKE STEPS WHICH WOULD
ADVERSELY AFFECT BASIC AMERICAN ECONOMIC AND/OR SECURITY
INTERESTS IN PHILIPPINES. WE ARE PRESENTLY RENEGOTIATING
OUR PRINCIPAL BILATERAL ECONOMIC AND SECURITY AGREEMENTS
WITH PHILIPPINES, AND APPLICATION OF SECTION 32 COULD
SERIOUSLY DISRUPT THESE TALKS AND MAKE THEIR SUCCESSFUL
COMPLETION IN US INTEREST CONSIDRABLY MORE DIFFICULT.

11. IN DISCUSSIONS WITH GOP OFFICIALS, EMBASSY OFFICERS
HAVE ON A NUMBER OF OCCASIONS EXPRESSED INTEREST AND CONCERN
OVER DETENTION OF SEVERAL MAJOR NON-COMMUNIST POLITICAL
OPPONENTS OF MARCOS. WE INTEND TO CONTINUE SUCH INFORMAL
EXPRESSIONS OF CONCERN ABOUT POLITICAL ARRESTS AND CONTINUED
SUSPENSION OF RELATED CIVIL LIBERTIES AS A MEANS OF MAKING
GOP LEADERS AWARE OF CONTINUING US INTEREST IN T
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